

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 15-20652

D-3 EUGENE FISHER,
D-4 COREY BAILEY,
D-6 ROBERT BROWN,
D-13 ARLANDIS SHY,
D-19 KEITHON PORTER,

Defendants.

JURY TRIAL

Friday, August 17, 2018

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APPEARANCES:

For the Government:

JULIE FINOCCHIARO, ESQ.
JUSTIN WECHSLER, ESQ.
TARE WIGOD, ESQ.
MARK BILKOVIC, ESQ.
Assistant U.S. Attorneys

For the Defendants:

HENRY M. SCHARG, ESQ.
On behalf of Eugene Fisher

CRAIG DALY, ESQ.
KEITH SPIELFOGEL, ESQ.
On behalf of Corey Bailey

JAMES FEINBERG, ESQ.
On behalf of Robert Brown

MARK MAGIDSON, ESQ.
JOHN THEIS, ESQ.
On behalf of Arlandis Shy

STEVEN SCHARG, ESQ.
On behalf of Keithon Porter

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N O N E

Detroit, Michigan

Friday, August 17, 2018

At 8:30 a.m.

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(Jury began deliberations.)

(Proceedings held on the record without the presence of the jury at 10:20 a.m.)

THE COURT: Okay. We're on the record.

The Court received a note at 9:00 this morning that reads: Can we please get the video of 5-8-15 shooting, and the Court has had the opportunity to have some discussion with counsel to get their ideas about the response to this, as well as the rest of this note as it relates to the request for the video.

It's agreed that that request is that -- that the exhibit number for the video referred to in that question is Number 392, and so the Court will be sending in that video in response to the question. Is that as understood by defense counsel?

MR. H. SCHARG: Yes.

MR. S. SCHARG: Yes, your Honor.

THE COURT: And the government as well?

MS. FINOCCHIARO: Yes, your Honor.

1 **THE COURT:** All right. The second question
2 they asked is: Can we get a more clear definition of the
3 term "enterprise"? Both sides have suggested in our
4 discussion as to this portion of the message is to simply
5 refer them back to the instructions that were given,
6 including the first -- the discussion of the first element
7 of enterprise as defined as Instruction Number 17, but
8 also the references to enterprise that may assist them in
9 understanding the -- the definition which are included in
10 Instructions 18 and 19 as well.

11 **MR. H. SCHARG:** Judge, we're opposed to you
12 directing them to specific instructions regarding
13 definition. It's clear -- we think that you can tell them
14 that there's definitions in the instructions, but there's
15 also references to enterprise and definitions and examples
16 throughout the jury instructions, and they should not be
17 limited to the areas of the instructions that you direct
18 them to. So it's clear that there's definitions.

19 The problem is is that they want you to expand on
20 what's in the instructions, which you cannot do, and you
21 should not direct them to specific -- you know, to
22 specific definitions of the enterprise in the
23 instructions. You can say that there's instructions that
24 have been designated and noted in bold print in the
25 instructions, but you can't give them any further

1 direction as to where they should search in the body of
2 the instructions.

3 **THE COURT:** All right. Is the government in
4 agreement with that?

5 **MR. BILKOVIC:** Your Honor, I don't think
6 there's anything wrong in directing them to the portion of
7 the instruction that may answer the question that they are
8 asking. They are asking about enterprise. I would
9 suggest that you tell them that enterprise has been
10 defined for you in Instruction 17, and instead of
11 referring them to 18, you could say, there's also other
12 discussions of enterprise throughout the instructions that
13 you should also rely on. Rely on all of the instructions
14 in rendering your decisions, something like that.

15 **MR. H. SCHARG:** That's fair.

16 **THE COURT:** Okay. The Court will respond in
17 that fashion then.

18 The next question in the note -- or statement in
19 the note reads: We would like phone records and Instagram
20 records.

21 In response to that question, we discussed it a
22 little bit on the record -- or a little bit in advance of
23 going on the record today, and as I understand it, we're
24 going to be sending in a list of the exhibits so that they
25 can look through that list if they are searching for a

1 request for exhibits to be sent in, and we'll tell them
2 that we have an exhibit list that's going to be forwarded
3 to the jury room so that they can ask for specific
4 exhibits as they wish. In the meantime, we will be
5 sending back phone records and Instagram records from that
6 exhibit list that was received into evidence, and that
7 would omit Facebook records because they don't
8 specifically ask for Facebook records, and if they do, I
9 think there's some redaction that has to occur with
10 respect to those as I understand it.

11 **MS. FINOCCHIARO:** Actually it was for the
12 phone records, and I have already taken care of that.

13 **THE COURT:** Okay.

14 **MS. FINOCCHIARO:** So we should be fine.

15 **MR. WECHSLER:** Judge, just regarding the
16 exhibit list, I've worked on the case for multiple months,
17 and some of this is confusing to me. So just with the
18 caveat, if they don't understand the exhibit list or
19 there's something that's not clear on it, to let us know,
20 and we'll try to clarify it, just so they don't rely
21 solely on our wording.

22 **THE COURT:** That seems to be reasonable.

23 Is defense counsel in agreement with that
24 approach?

25 **MR. DALY:** Don't mind if you tell the jurors

1 that the exhibit list is confusing, Judge.

2 **MR. BILKOVIC:** Were you planning on sending
3 them back all the cell phone records and Instagram
4 records?

5 **THE COURT:** Yes.

6 **MR. BILKOVIC:** Because I would suggest --

7 **THE COURT:** So when you say "cell records" --

8 **MR. BILKOVIC:** They want the phone records.
9 We don't know what that means. That's what I'm saying.
10 There's call detailed records, there's text records. I
11 would suggest after you tell them about enterprise, when
12 you tell them about the exhibit list, and tell them to
13 basically be more specific with what they want, because
14 there are a ton of phone records, and like I said, there's
15 call detailed records, which are basically phone bills.
16 Then there's the cell phone extractions of what was
17 actually on the phones, text messages, pictures and
18 videos.

19 So I would suggest that we just get more clarity
20 from them after they get the exhibit list as to what they
21 want because it would be lot quicker for us to send back
22 specifically what they want, if they only want two or
23 three of the Instagram records instead of 30 of them.

24 **THE COURT:** Okay.

25 **MR. DALY:** That makes sense with regards to

1 that question, and the question that follows the last
2 question.

3 **MR. BILKOVIC:** With Lawton and the cell
4 towers slides, I agree. The government agrees, I think.

5 **THE COURT:** As it relates to that last
6 question that reads: And info on Lawton shooting and cell
7 tower slides, and you're suggesting that when they get
8 list of exhibits, that it should be -- they should be able
9 to discern what they're wanting to look at in that regard?

10 **MR. DALY:** Yes.

11 **MR. FEINBERG:** Judge, that word is "all info"
12 not and.

13 **THE COURT:** All info. I see. Okay. I think
14 that makes sense. I read it as and, meaning -- and they
15 dropped the "d", but it looks like -- I can see why you
16 would conclude otherwise. I think it could very well be
17 all info.

18 So if we're responding to it with all info on
19 Lawton shooting and cell tower slides, isn't that specific
20 enough to know what they want?

21 **MR. BILKOVIC:** The cell tower slides for the
22 entire case or just Lawton?

23 **MR. DALY:** And I don't know what all the
24 information on the Lawton shooting is. I mean, I do, but
25 I don't.

1 **MR. BILKOVIC:** I prefer we ask them for
2 clarification once they get the exhibit list of
3 specifically what exhibits they want.

4 **MR. H. SCHARG:** I've got a question regarding
5 exhibit list. The caption, Eugene Fisher, aka Fist,
6 F-i-s-t, never referred to as Fist, but Fes, and I would
7 like that corrected before the exhibit list goes into the
8 jury room.

9 **MS. FINOCCHIARO:** That's fine.

10 **THE COURT:** Corrected by removing the -- all
11 together by changing it?

12 **MR. H. SCHARG:** Whichever way you want it,
13 either by redact the aka Fist, or aka Fes, whichever way,
14 but it has to be corrected.

15 **MS. FINOCCHIARO:** Your Honor, we will
16 actually redact all the nicknames that are in the caption.
17 So it's just the actual --

18 **THE COURT:** All right.

19 **MS. FINOCCHIARO:** -- defendants' names.

20 **MR. H. SCHARG:** Second of all, you will also
21 provide them with a copy of defense exhibit list?

22 **THE COURT:** Yes. We're going to wait to send
23 the government exhibit list in until your defense exhibit
24 list is also available to send in.

25 **MR. THEIS:** I did not hear a resolution of

1 the last part of it. Are we going to wait until they make
2 a separate request after they get that list?

3 **THE COURT:** Yes.

4 **MR. THEIS:** Before we send them the cell
5 tower slides?

6 **THE COURT:** Yes.

7 **MR. THEIS:** Thank you.

8 **THE COURT:** Let's bring the jurors in.

9
10 (Proceedings with jury at 10:28 a.m.)

11
12 **THE COURT:** You may be seated. Good morning.

13 **ALL JURORS:** Good morning.

14 **THE COURT:** So we received a note, and had an
15 opportunity to discuss it, and we will provide you with
16 our response.

17 This note begins: Can we please get the video of
18 5-8-15 shooting? We determined that to be Exhibit 392,
19 and we'll be sending that into the jury room with you.

20 We have the computer equipment here. The video is
21 not completely set to go, but it will shortly be soon
22 after you're sent back into the jury room.

23 The next question is: Can we get a more clear
24 definition of term "enterprise"? Of course, we have the
25 Jury Instruction 17. That is the definition of

1 enterprise, but there were references to enterprise
2 throughout the instructions that shed some light on the
3 definition as well. So spend some time with the words and
4 the instructions, and then if you have a specific issue
5 concerning some part of the instructions that you need me
6 to address to the Court, you can do that.

7 We have -- but in the meantime, we want as much as
8 possible to focus on the whole body of the instructions as
9 it relates to the terms.

10 The next question: We would like phone records
11 and Instagram records, and I believe it goes onto say, all
12 info or and info on Lawton shooting and cell tower slides.

13 We're going to -- in response to those questions,
14 we're going to forward to the jury room a list of exhibits
15 that have been received, and the list is somewhat
16 descriptive about the contents of those exhibits, and it
17 will allow you to focus on what you're interested in at
18 the moment. There's no reason you can't ask for all, but
19 in this case there are various phone records as you know,
20 classes of records that were received into evidence, and
21 it's -- and rather than to throw a lot of stuff at you at
22 once, it probably would be best to try to use this list to
23 identify what you're looking for, and then if you don't
24 understand the list or you're having trouble locating what
25 you want to look at, you can follow up with another note

1 for us to identify the records that you're interested in.

2 The same exists with if this is all info on Lawton
3 shooting and cell tower slides, then cell tower slides --
4 are you asking for cell tower slides, that relate just to
5 the Lawton shooting, or are you asking for all of them,
6 that kind of thing in responding to your note would be
7 helpful for us.

8 So you'll have those exhibit numbers, and I think
9 that will facilitate your identifying what you want to
10 look at, and we'll have the equipment in the jury room
11 that should allow to you play those that you want to look
12 at.

13 So with those responses, is counsel satisfied with
14 the instructions given to the jury in response to this
15 note?

16 **MR. FEINBERG:** Yes, your Honor.

17 **MR. S. SCHARG:** Yes, your Honor.

18 **MS. FINOCCHIARO:** Yes, your Honor.

19 **THE COURT:** Good. We'll let you go back and
20 continue your deliberations.

21
22 (Jury excused to continue deliberations at 10:36 a.m.)
23

24 **THE COURT:** Before everyone one leaves, if we
25 get an another question that does ask for exhibits by

1 number, we'll simply respond to that by providing the
2 exhibits that are requested. If there's some confusion
3 about what exhibits they are seeking or it's not clear,
4 then we'll bring you all down to reconvene.

5 **MS. FINOCCHIARO:** Okay. We'll get the
6 exhibits ready.

7 **THE COURT:** Thank you.

8 **MR. H. SCHARG:** We want to see the exhibit
9 list before they go in. I'll stick around.

10
11 (Recess taken at 10:36 a.m.)

12
13 (Proceedings concluded for the day at 2:30 p.m.)

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C E R T I F I C A T I O N

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Ronald A. DiBartolomeo
Ronald A. DiBartolomeo, CSR
Official Court Reporter

February 4, 2019
Date

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